IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

CRL.A.No. 135 of 2007()

ST.287/2006 ON THE FILE OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS-IX, THIRUVANANTHAPURAM.

.....

APPELLANT: COMPLAINANT:

V.S. MONY, AGED 63 YEARS,
S/O.SUBRAMONIA PILLAI, MANAGING PARTNER
V. SUBRAMONIA PILLAI & SONS,
WHOLESALE HANDLOOM CLOTH MERCHANTS,
KAITHAMUKKU, THIRUVANANTHAPURAM.

BY ADV. SRI.NAIR AJAY KRISHNAN
SRI.BIJU HARIHARAN

RESPONDENTS: ACCUSED & STATE:

---

1. M. BABU, PROPRIETOR, DEVI TEXTILES,
OPP.KSRTC BUS STAND, ATTINGAL,
THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY ADV. SRI.M.R.RAJESH FOR R1
SMT.A.K.PREETHA
P.P.SRI.PUZHAKKARA MOHAMMED FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

- -

Crl.A. No. 135 of 2007

- -

Dated this the 18th day of July, 2007

JUDGMENT

The appeal is filed by the complainant against the acquittal order passed in S.T.No.287/2006 on the file of the Judicial Magistrate of the First Class-IX, Thiruvananthapurm. The 1st respondent was acquitted on the sole ground of the absence of the petitioner. It is stated in the order under challenge that in spite of specific direction complainant did not appear for furnishing evidence. It is not discernible from the impugned order that the case was posted only for the evidence of the appellant and that the appellant had purposely absented from the court. As per the principles laid down by this Court in decisions reported in Don Bosco V. Partech Computers Ltd. (2005(2) KLT 1003), G.F.S. Chits & Loans (P) Ltd. V. Rajesh (2006(3) KLT 825) and a decision of the Apex Court reported in Associated Cements Co. Ltd. V. Keshwanand (1998(1) KLT 179 (S.C.), the impugned order is not sustainable. In Don Bosco V. Partech Computers Ltd. (Supra), this Court held that when the presence of the complainant was quite unnecessary

and the Magistrate could proceed with the case by adjourning the same even if there was no representation from the counsel, the Magistrate should have adjourned the case, particularly when steps under section 82 and 83 of the Cr.P.C. were pending against the accused. In G.F.S.Chits & Loans (P) Ltd. V. Rajesh (Supra) this Court held that the courts should also bear-in-mind that unmerited, thoughtless disposal gives wrong signal to the society, staking even public confidence in the system of administration of justice. In paragraph 17 of 1998(1) KLT 179 (Supra) the Apex Court held as follows:-

> "17. Reading the section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice."

2. Considering the above principles laid down by this Court as well as the Apex Court, this Court is of the view that the order under challenge is liable to be set aside and the matter has to be remitted to the trial court for fresh consideration. Ordered accordingly. The trial court is directed to proceed with the case from the stage at which the impugned order has been passed.

The appeal is allowed as above.

The parties shall appear before the court below on 18-8-2007.

The records of the case shall be forwarded to the trial court forthwith.

K. Thankappan,
Judge.

mn

K. Thankappan,J.

- - - - - - - - - - - - - - - -

Crl.A.No.

- - - - - - - - - - - - - - - -

Judgment
-7-2007